No. 79

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

COCA-COLA BOTTLING CO. OF LOUISVILLE, INC.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

J. ALBERT WOLL
815 15th Street, N. W.
Washington, D. C.

ARTHUR J. GOLDBERG
1001 Connecticut Ave., N. W.
Washington, D. C.

THOMAS E. HARRIS
718 Jackson Place, N. W.
Washington, D. C.

Attorneys for American Federation of Labor and Congress of Industrial Organizations

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Cases:

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National Labor Relations Board v. *Highland Park Manufacturing Company*, 341 U. S. 322 2, 3, 5, 14, 17, 18

Statutes:

National Labor Relations Act, as amended, 61 Stat. 136, 65 Stat. 601, 29 U. S. C. 151, *et seq.*:

Section 9(f) 11, 12, 13, 14, 15, 16, 18, 20

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Section 9(h) 1, 2, 10, 11, 12, 14, 16, 17, 18, 20

Miscellaneous:

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INTRODUCTION

This brief *amicus curiae* is submitted by the American Federation of Labor and Congress of Industrial Organizations with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.[1]

This brief is submitted by the AFL-CIO, firstly, because of the importance of the issue involved to all labor organizations and employees covered by the National Labor Relations Act. The holding of the court below, that an employer is entitled to litigate in an unfair labor practice case a claim that the union was not in compliance with Section 9(h) of the Act, affords to employers a ready means of substantially delaying all unfair labor practice cases and representation

[1] Consent was requested and obtained in the name of the CIO. The CIO and AFL have now combined to form the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).

proceedings under the National Labor Relations Act. Further, to thus invite employers to litigate issues of union compliance threatens grave injury to unions, since the penalties for non-compliance are severe and "compliance at any given moment, or continuous compliance, [is] a matter of happenstance." *Dant* v. *NLRB,* 344 U. S. 375, 383.

This brief is submitted by the AFL-CIO, secondly, because it has a direct interest in this particular case, since one of the issues sought to be litigated by the respondent is the compliance status of the CIO prior to its combination with the AFL.

This brief is submitted, finally, because we believe that we have special knowledge pertinent to the decision of this case which should be before the Court.

ARGUMENT

The broad issue presented by this case is whether an employer is entitled to litigate in an unfair labor practice case under the National Labor Relations Act, a claim that the unions involved were not in compliance with Section 9(h) of that Act.

This case is an outgrowth of *NLRB* v. *Highland Park Manufacturing Company,* 341 U. S. 322. That was an unfair labor practice case, instituted on a charge by the Textile Workers Union. A majority of the Court there held that the employer was entitled to litigate the question whether compliance with Section 9(h) by the CIO, with which the Textile Workers Union was affiliated, was required in order for the Textile Workers Union to be in compliance. Here the issue which the employer asserts the right to litigate is not whether compliance by a particular labor organization was required, but whether the three labor organizations involved had in fact complied.

More specifically, the respondent seeks to litigate the question whether the omission of one W. B. Taylor to file a

non-Communist affidavit in 1951[2] defeated compliance by (1) the CIO, (2) the International Union of Brewery Workers, and (3) Local 20 of that International, the last being the charging union. In 1951 Taylor was CIO Regional Director for Kentucky, but it is not clear of what organization respondent claims him to have been an officer. (See *infra*, pp. 13-14.)

If this principal procedural question is decided adversely to the Board, there is then presented the substantive issue of the reasonableness of the Board's interpretation of the term "officer" as meaning a person occupying a position identified as an office in a union's constitution or bylaws.[3]

The legal arguments against the right of employers to litigate union compliance in unfair labor practice cases or representation proceedings, and the pertinent legislative history, are fully set forth in the Board's brief, and we shall not repeat them. The Board's brief also stresses the considerations of administrative convenience, or even necessity, which support both (1) its position that issues of compliance may not be litigated in unfair labor practice cases or representation proceedings and (2) its interpretation of the term "officer". We believe that the Court can better evaluate these considerations of administrative necessity if it has before it a brief explanation of the structure and staffing of labor federations and unions. We are encouraged to proffer such an explanation by our belief that the decision of the Court majority in *Highland Park* stemmed at least in part from a misunderstanding of the structure and functions of a labor federation, and by the confusion on this subject evident in the Board's brief in the present case.

Further, we respectfully urge that in deciding whether

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[2] The complaint issued on October 16, 1951 (R. 5c), and that would be the critical date under this Court's decision in *NLRB* v. *Dant*, 344 U. S. 375.

[3] The Board requires affidavits from persons other than those designated as officers in the union constitution only if it has reasonable cause to believe that the union failed to designate a position as an office for the purpose of evading the filing requirements. Bd. Br., p. 49.

union compliance is to be open to employer challenge in unfair labor practice cases and representation proceedings, the Court should take into account the likelihood of inadvertent non-compliance and the severe penalties which are visited upon unions and workers consequent upon a judicial finding of non-compliance. These considerations, we submit, should weigh against encouraging employers to litigate compliance issues in which they normally have only a collateral and adventitious interest. Cf. *NLRB* v. *Dant*, 344 U. S. 375.

Accordingly, we will discuss: (1) The structure of a labor federation, and, in particular, of the CIO as it existed prior to its recent merger with the AFL; (2) The staffing of the CIO prior to merger; (3) The practical consequences of holding that an employer may litigate union compliance in an unfair labor practice or representation proceeding; and (4) The drastic penalties which result to unions and workers from a decision that a union was not in compliance.

I

THE STRUCTURE OF THE CIO

A labor federation, such as the CIO or AFL, or the combined AFL-CIO, is essentially an association of national or international unions.[4] Except in a very limited and special sense, which will be noted later, a federation is not itself a union, but an association of unions. Individual workers are not technically members of a federation but of a union, the unions themselves being in turn the members of the federation. Local unions of national or international unions are similarly not themselves technically members of a federation.

In 1951, and also at the time of its combination with the AFL, the membership of the CIO consisted of: (1) Af-

[4] In practice the terms "international union" and "national union" mean the same thing. Most unions with headquarters in the United States have some Canadian membership. We will use the term "international union".

filiated international unions; (2) Organizing committees; (3) Directly affiliated local unions, known in the CIO as local industrial unions; (4) State and local central bodies, known in the CIO as state industrial union councils and local industrial union councils. The structure of the AFL was similar, except that it had, in addition, a fifth category of members, that is trades departments, such as the Metal Trades Department. The AFL-CIO likewise has trades departments. In some cases these departments have local councils.

1. Affiliated International Unions

The international unions are the core of a federation's membership. In the case of the CIO at the time of the merger, for example, its affiliated international unions had some 5,000,000 members, while the total membership of the local unions directly affiliated with the CIO was only about 14,000. International unions are not subordinates of a federation. They are autonomous unions affiliated with the federation. The other federation members, i.e., organizing committees, directly affiliated local unions, state and local central bodies, and trades departments, are subordinates of the federation.

2. Organizing Committees

Organizing committees are, usually, new unions which have not yet obtained the status of international unions. In *Highland Park,* Justice Douglas, in his dissenting opinion, suggested that with respect to organizing committees "the CIO had control comparable to the power a 'national or international' union exercises over its constituent [local] unions." (341 U.S. 322, at 328.) Actually the CIO often designated the officers of organizing committees, while local unions elect their own officers.

3. Directly Affiliated Locals

The CIO contained a small number of local unions—35 at the time of the 1954 convention—called local industrial

unions, which were not a part of any international union but direct affiliates of the CIO itself. Usually this arrangement existed because there was, at the time, no affiliated international union functioning in the area and jurisdiction which could provide the necessary services to the local.

With respect to these local industrial unions, as with respect to organizing committees, the CIO itself served in effect as an international union. The CIO retained supervision over the affairs of local industrial unions, supplied funds during strikes if necessary, and participated in their collective bargaining. In 1951 there was only one such local in the State of Kentucky, however, and it was not the local union involved in this case, which was a local of the International Brewery Workers Union, CIO.

Thus, except in the special case of directly affiliated locals or of organizing committees, the CIO did not participate in collective bargaining or call strikes. International unions affiliated with a federation, or their local unions, do negotiate agreements and do call strikes. They do so, however, not as divisions or subordinates of a federation, but as self-governing, autonomous, unions.

The Government states in its brief (p. 32, footnote 9):

> "We are informed that the CIO is affiliated with seventeen international unions and eighty-eight local unions in the State of Kentucky."

The formulation that the CIO was affiliated with the international unions is incorrect; rather the international unions were affiliated with the CIO. In the case of local unions, the formulation is additionally incorrect because local unions were not themselves technically affiliated with the CIO except directly affiliated local industrial unions, of which there was only one in Kentucky in 1951 and 1955.

4. State and Local Central Bodies

The state and local CIO industrial union councils were subordinate bodies, which performed on a smaller geo-

graphical scale some, but not all, of the same functions that the CIO performed on the national level. They were comprised of the locals of CIO affiliated international unions, and of any directly affiliated locals, within their particular territory. These CIO state and local councils served as vehicles by which the local unions of a particular geographical area could act together with regard to political, legislative, educational and other matters of general union concern. Unlike the CIO itself, its state and local councils had no organizing functions.

II

STAFF OF THE CIO

Under the CIO Constitution, its ultimate governing body was an annual convention composed of delegates from all its affiliates. Between conventions, authority was vested in the CIO Executive Board, which consisted of the CIO's three executive officers and eight vice presidents plus one representative from each affiliated international union. The executive officers of the CIO—i.e., the President, Executive Vice President, and Secretary-Treasurer—and its eight Vice Presidents had non-Communist affidavits on file when the complaint in this case issued (R. 29a).

In addition to these officers, the CIO had a substantial staff, both at its headquarters in Washington, D. C., and throughout the country. The staff departments of the CIO were Education and Research, Legislative, Legal, International Affairs, Press and Public Relations, Community Affairs, and the Organization Department. Each of these departments was headed by a Director, and normally contained one or more Associate or Assistant Directors, plus variously entitled staff personnel. In addition there existed several CIO committees, composed in most instances of officers of affiliated international unions, and some of these committees, such as the Committee on Civil Rights, had

Directors, or Executive Secretaries, or other staff personnel of their own.

The bulk of the CIO field staff was in the Organization Department, headed by the Executive Vice President. The members of this field staff had a variety of job titles, such as:

(1) Regional Director;
(2) Subregional Director;
(3) Assistant Regional Director;
(4) Organizational Director;
(5) Assistant Organizational Director;
(6) Field Representative;
(7) Special Representative;
(8) Representative.

In 1951 the CIO had 40 individuals, including W. B. Taylor, who were designated as Regional Directors. At that time their duties embraced organizing unorganized workers and servicing state and local councils and any local industrial unions unions in their areas. Neither in 1951 nor at any other time did CIO Regional Directors have any authority over or duties with respect to international unions affiliated with the CIO, or their local unions, such as Local 20 of the Brewery Workers Union, the charging union in this case. In 1951 a CIO Director might have been concerned with the organizing of such a local union but his duties with respect to it would have terminated upon its being chartered by an international union. In 1953 the field staff was reorganized, the number of Regional Directors was reduced to thirteen, and their responsibilities for organizing were eliminated.

In addition to changes of this sort in the duties attached to particular staff positions, the job assignments of the various persons on CIO field staff were changed with considerable frequence. Thus the personnel file of W. B. Taylor discloses the following list of assignments:

April 1, 1943-January 1, 1946—On loan to the Oil Workers International Union, CIO, as director of its organizing drive;

February, 1946-August, 1946—Designated as "CIO Representative" and on loan to United Gas, Coke and Chemical Workers of America, CIO, as director of its organizing drive;

September, 1946 - December, 1946—Designated as "CIO Field Representative" and assigned to Railroads;

December, 1946-June, 1953—"CIO Regional Director", Louisville, Kentucky;

July, 1953[5]-January, 1955—Designated as "Special Representative" and assigned successively to different organizing projects in various parts of the country;

January, 1955—Designated as "Representative" and assigned to an Organizers Pool to be available "for any situation that may arise";

September, 1955—Granted leave of absence for job with International Cooperation Administration in Indonesia.

The structure and staffing of the international unions affiliated with the CIO in general resembles that of the CIO itself. In the case of some of the larger unions, however, the structure is more complex and the staffs larger than was the case with the CIO.

The structure of local unions is, of course, considerably simpler, and only the larger local unions have any paid staff. Even in the case of a relatively small local, however, such as that here involved, eleven different persons were classified as officers and non-Communist affidavits were filed for them (R. 28a).

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[5] This change of assignment resulted from the reorganization of the CIO regional office structure referred to above.

III

TO HOLD THAT AN EMPLOYER MAY LITIGATE COMPLIANCE IN AN UNFAIR LABOR PRACTICE PROCEEDING WOULD INVITE ENDLESS DELAY

As the foregoing description shows, a labor federation such as the CIO, has a complicated organizational structure and a complicated and constantly changing staff structure. Thus if it were held that employers are entitled to litigate in unfair labor practice cases or representation proceedings any issues they choose to raise as to the "officer" status of union employees, they would have a ready device for delaying any and every Labor Board proceeding. Under the decision below, whenever an employer claims that a particular individual has, or had at some past time, the status of a union officer, it would be necessary "to introduce testimony as to the functions and extent of jurisdiction of said" person (R. 541a).

The Board states in its brief (Br., p. 35):

> "Moreover, if evidence could be adduced as to one individual, the same issue could be raised as to virtually every person performing any duties for the charging union, its international and every other affiliated union (see *infra*, p. 61)."

More accurately, the same issue could be raised as to virtually every person performing any duties for the charging local union, its international, and any federation with which the international was affiliated. And as we have shown, the structure of labor organizations is so complicated and they have such a wide variety of officials, functionaries, and staff positions, and these change with such frequency, that an employer who wished to litigate compliance could always find some nominally new issue. Further, as pointed out in the Board's brief, pp. 36-39, if the issue of compliance with Section 9(h) is litigable in unfair labor practice cases and representation proceedings at an employer's instance, ques-

tions of compliance with 9(f) and 9(g) are presumably also litigable, which would open up an even broader field.

The only motives which would normally lead an employer to litigate issues of union compliance are (1) delay, and (2) the hope of uncovering some technical or inadvertent non-compliance that would defeat the processing of the unfair labor case or representation proceeding. The conduct of the employer in this very case shows the sort of fishing expedition that would be invited by a ruling that employers may litigate union compliance.

Thus, shortly after the filing of the charge, and before a complaint was even issued by the General Counsel (R. 13a) counsel for the respondent wrote the Board inquiring as to the compliance status of the three labor organizations —Local 20, the International Union of Brewery Workers, and the CIO—under Section 9(f), Section 9(g) and Section 9(h) of the Taft-Hartley Act. He was informed that the material relating to compliance might be inspecteed at the Board's office (R. 25a). Pursuant to this correspondence, counsel for the respondent appeared at the Board office in July 1951 and inspected the non-Communist affidavits filed by the three organizations (R. 387a). (The data required to be filed under Section 9(f) and (g) is filed with and kept at the Department of Labor.)

When the complaint issued, the respondent moved to dismiss it on the grounds that it did not affirmatively allege that (1) the Local Union, (2) the international union, and (3) the CIO, are and at all relevant times were in compliance with Section 9(f), (g) and (h). The motion also alleged as grounds for dismissing the complaint that copies of all of the compliance documents relating to Section 9(f), (g) and (h) had not been filed as part of the record in the case and furnished to the respondent (R. 7a-10a).

When the motion to dismiss the complaint was denied (R. 11a-12a) the respondent filed an answer, alleging that

neither Local 20, nor the International Union, nor the CIO (R. 13a-14a):

> "have filed and now have on file with the Secretary of Labor of the United States of America any or all of the documents, statements, material and data required by subsections (f) and (g) of Section 9 of the Labor-Management Relations Act of 1947, and that each of the respective officers of said organizations (including W. B. Taylor, Regional Director of the Congress of Industrial Organizations in Kentucky) has not executed and filed with the National Labor Relations Board, and does not now have on file with said Board, the affidavits required by subsection (h) of Section 9 * * *."

And this answer went on to assert "that the Respondent is entitled to inspect and examine, and to have filed in the record of this case," all of the records and documents relating to compliance (R. 14a).

Next, in January 1952, counsel for respondent reappeared at the Board office, and asked to examine the compliance files of the three unions again (R. 389a-390a). This time the request was denied. (Id.)

Respondent's counsel then wrote the General Counsel of the Board requesting detailed information as to the compliance by the three labor organizations with the three sections of the Act (R. 26a-27a). In reply the Board furnished the respondent with a list of the names of the officers of the three organizations who had filed the non-Communist affidavits (R. 27a-29a).

Next, the respondent secured subpoenas directed to the Chairman of the Board and to its Regional Director requiring them to produce the non-Communist affidavits filed by the officers of the three organizations (R. 30a-31a). He likewise issued a subpoena directed to the Secretary of Labor requiring him to produce the compliance documents filed by

the three unions under Section 9(f) and (g) of the Act (R. 31a-32a). These subpoenas were subsequently revoked by the trial examiner (R. 387a) on the ground that the company was not entitled to litigate the union's compliance in an unfair labor practice proceeding.

Finally, at the hearing counsel for respondent stated (R. 388a-389a):

> "* * * that as regional director of the Congress of Industrial Organizations, W. B. Taylor is charged with administrative and executive duties and powers over Local 20 of the Brewery Workers Union, the charging union in this action."

To this, Board Counsel responded (R. 389a):

> "General Counsel would like to state at this point, before going into the ex parte statement by counsel for respondent, there is no evidence of any duties that W. B. Taylor may have with respect to the Local. Furthermore, I would like to state for the record that the said W. B. Taylor was in attendance at the hearing, I believe during the first two or three days, and of course was available for questioning."

Counsel for the respondent answered (R. 389a):

> "* * * I want to say that I am able to testify to those facts of my own knowledge as a result of investigation that I have made of those facts, and I offer so to do; * * *."

In its decision the Board states that respondent contended that "Taylor was in fact an officer of the CIO." (R. 527a.)

In its judgment the Court of Appeals states that at the hearing (R. 541a):

> "Respondent offered to show that said W. B. Taylor is an officer of the CIO, that he exercises administrative and executive powers over United Brewery and Soft Drink Workers Local 20, *and exercises a working*

> *control over every CIO local union and affiliated national union which operates within the Commonwealth of Kentucky and the CIO region;"* [Italics added]

The statements that respondent asserted to show that Taylor "is an officer of the CIO" are not precisely correct. Respondent's contentions both at the hearing and in its pleadings left it unclear whether respondent was asserting that Taylor was an officer of the CIO or of Local 20.

The italicized statement by the Court of Appeals is entirely incorrect: respondent made no such offer of proof.

As best we can ascertain, the italicized statement was taken by the court below from the respondent's brief before it, at p. 84.[6] The statement is as unsupported in the record as it is preposterous.

The court below ordered the case remanded to the Board (R. 541a):

> "with instructions to permit respondent to introduce testimony as to the functions and extent of jurisdiction of said W. B. Taylor as Regional Director of the CIO * * *."

It is not clear what disposition the court intended to make of the respondent's claim to litigate compliance with 9(f), (g) and (h) by the three labor organizations generally, or of the subpoena issue.

But it is clear that if employers are accorded the right to litigate a union's compliance status, no Board proceeding will ever be brought to a timely culmination.

The facility with which employers could indefinitely delay Board proceedings if entitled to litigate union compliance is, of course, increased by this Court's decision in *Highland Park*. Under that ruling, if an employer is entitled to litigate the issue of union compliance at all, he could raise it not only as to the charging local union and

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[6] Similar statements are contained in respondent's Brief in Opposition, p. 4, and in the Board's brief in this Court, p. 4.

its international union, but with respect to the federation with which the local's international union is affiliated. In the view of the Board and the court below, that is what respondent did here.

Thus in nearly every Board case or proceeding, the employer could litigate the whole subject of the structure and staffing of the AFL-CIO, simply upon an assertion that some employee of the federation who had not filed a non-Communist affidavit was an "officer" of the federation. If respondent's claim is that Taylor was an officer of the CIO, it is not material to that claim that Taylor was stationed in Kentucky. Such a claim could as well have been urged as to almost any CIO employee, anywhere.

An employer could, of course, with equal facility, raise issues as to officer status in international unions or local unions, though in the latter case the delaying potential of the issue would be much smaller. Finally, he could also litigate as to the sufficiency of the organizational and financial data filed under Sections 9(f) and (g) by the federation, by the international union, and by the local union.

To hold that an employer is entitled to litigate union compliance in an unfair labor practice case or representation proceeding thus would result in bogging down all Board proceedings in a miasma of basically collateral and irrevelant inquiries.

IV

THE COURT SHOULD TAKE INTO ACCOUNT THE SEVERE PENALTIES CONSEQUENT UPON EVEN INADVERTENT NON-COMPLIANCE

We respectfully submit that, in deciding whether employers may litigate union compliance in unfair labor practice cases or representation proceedings, the Court should take into account (1) the likelihood of inadvertent non-compliance, (2) the disastrous consequences which result

to unions and to employees from any holding that the union was not in compliance, and (3) that the independent, collateral proceeding established by the Board for investigating compliance avoids the temptation to employers to litigate compliance simply for delay. All these considerations, we submit, should weigh against according to employers the right to litigate issues of compliance in unfair labor practice cases or representation proceedings.

1. This Court is aware of the likelihood of inadvertent non-compliance by unions with the requirements of Section 9(f), (g) and (h). In *NLRB* v. *Dant* 344 U.S. 375, 380, the Court said:

> "As a practical matter, elections of new officers, changes in organizational structures, difficulties and delays in auditing financial statements or in obtaining information with respect to the numerous details which §9(f) and (g) requires, makes compliance at a given moment, or continuous compliance, a matter of happenstance."

Therefore, to minimize the consequences of non-compliance with Section 9(h), the Court ruled that the crucial date for compliance in unfair labor practice cases is the issuance of the complaint rather than the filing of the charge. The Court said, p. 380:

> "Such normal non-compliance at the time of filing a charge should not work to frustrate the Act's purpose of remedying unfair labor practices committed against unions which do have leadership willing to comply."

We respectfully urge that same policy of minimizing the drastic consequences of inadvertent non-compliance here supports interpreting the Act as not entitling employers to litigate union compliance in unfair labor practice cases or representation proceedings.

2. Let us look at the consequences which would attend a judicial determination, in a case like this, that at some past date the CIO was not in compliance because some staff member who, in the Court's view, should have filed an affidavit, did not. This is not a matter on which we need speculate, for we have had the actual experience of this Court's decision in the *Highland Park* case.[7]

As far as the prospective operation of the *Highland Park* decision was concerned it had none, since the CIO had complied with 9(h) before the decision. But the retroactive results of the decision were drastic.

The decision had the effect, first, of invalidating all complaints in unfair labor practice cases which had been issued pursuant to charges filed by CIO affiliates in the period prior to CIO compliance. Some 40 unfair labor practice complaints were in consequence dismissed by the Board and the courts. Many of these cases had been pending for years and in most of them no issue of CIO compliance had ever been raised by the employer.

The *Highland Park* decision had the effect, secondly, of invalidating all certifications as collective bargaining representative which had been issued to CIO affiliated international unions, or their local unions, during the period when the CIO was, as this Court held, not in compliance. We have no estimate of the number of such certifications, but it was large. Thirdly, the decision invalidated all union shop authorization certificates issued to CIO affiliates, or their locals, prior to the CIO compliance.

So far reaching and so unjust were these consequences that the Congress, with a unanimity never attained before or since on the controversial subject of Taft-Hartley, passed a special act, jointly sponsored by Senators Taft and Humphrey, to mitigate some of these consequences of the *High-*

[7] See Sixteenth Annual Report of the NLRB, pp. 42-47; Seventeenth Annual Report, pp. 23-25.

land Park decision.[8] This Act—the only amendment to Taft-Hartley since its enactment in 1947—provided in part:

> "Sec. 18. No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 9 of the National Labor Relations Act, as amended, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 9(f), (g), or (h) of the aforesaid Act prior to December 22, 1949, * * *." (Public Law 189, 82nd Congress, 1st Session, Approved October 22, 1951.)[9]

Congress thus validated the numerous representation certifications of CIO affiliated unions which would otherwise have been voided by the *Highland Park* decision. It did not, however, reinstate the 40 unfair labor practice complaints which had been dismissed in consequence of that decision.

Any decision in a case like the present holding that the CIO was at some past date not in compliance would have approximately the same drastic consequences as did this Court's *Highland Park* decision. It would void every unfair labor practice complaint issued during the period of non-compliance pursuant to a charge filed by (1) the CIO, or (2) an international union affiliated with the CIO, or (3) a local union of such an international union. And it would likewise invalidate all representation certifications issued during the period of non-compliance to a labor organization in any of these categories.

Any decision hereafter that the new merged federation, the AFL-CIO, was not in compliance at some date would have even wider consequences. For such a decision would

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[8] See Senate Report No. 646, 82nd Congress, 1st Session; House Report No. 1082, 82nd Congress, 1st Session. The latter states, p. 1: "The purposes of the bill are (1) to resolve problems arising from a recent Supreme Court decision, *National Labor Relations Board* v. *Highland Park Manufacturing Company* * * *."

[9] This Act also abolished union shop authorization elections.

mean not only that the federation was itself not in compliance, but that all of its affiliated unions and all of their local unions were out of compliance.

We respectfully urge that the litigation of compliance issues, in view of its potential of mischief, should not be unnecessarily expanded or encouraged by according to employers the right to raise such issues in unfair labor practice cases and representation proceedings.

3. The independent, collateral, proceeding established by the Board for the investigation of compliance questions is fully described in the Board's brief, pp. 5-7, 39-45. A determination adverse to a union in such a proceeding would presumably have the same deleterious consequences as an adverse determination in an unfair labor practice case or representation proceeding.

However, this separate collateral proceeding has the great advantage that an employer has no incentive to resort to it simply for delay, since any pending unfair labor practice case or representation proceeding involving the employer will be processed normally and independently of the compliance investigation.

CONCLUSION

For the reasons stated, and for those set forth in the Board's brief, we respectfully urge that the Court rule that an employer may not litigate issues of union compliance in an unfair labor practice case or representation proceeding. Otherwise employers will be encouraged to litigate compliance issues simply to delay Board unfair labor practice cases and representation proceedings. Further, the resulting volume of compliance litigation would threaten unions with grievous injury because of the increased likelihood of at least an occasional adverse determination on a compliance issue.

Acceptance of the Board's definition of the term "officer" would eliminate much of the litigation which would other-

wise result from allowing employers to litigate union compliance with Section 9(h) in unfair labor practice cases or representation proceedings; but it would not at all meet the problems which would arise from permitting employer litigation of compliance with Sections 9(f) and (g) in such cases or proceedings.

We therefore urge that the decision of the court below be reversed on the ground that employers may not litigate compliance issues in unfair labor practice cases.

Respectfully submitted,

J. ALBERT WOLL
815 15th Street, N. W.
Washington, D. C.

ARTHUR J. GOLDBERG
1001 Connecticut Ave., N. W.
Washington, D. C.

THOMAS E. HARRIS
718 Jackson Place, N. W.
Washington, D. C.

Attorneys for American Federation of Labor and Congress of Industrial Organizations